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12 TRIA BEAUTY, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

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18 TRIA BEAUTY, INC.

19 Plaintiff,

20 vs.

21 RADIANCY INC.,

22 Defendant
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FILED

2010 NOV -5 P 3:55

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CAL. SAN JOSE

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CV 10 - 5030 PVT

COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES FOR: VIOLATION OF
§ 43(a) OF THE LANHAM ACT;
VIOLATION OF CAL. BUS. & PROF.
CODE § 17500; VIOLATION OF CAL.
BUS. & PROF. CODE § 17200; AND
INFRINGEMENT OF FEDERALLY
REGISTERED TRADEMARKS

JURY TRIAL DEMANDED

2. Plaintiff is a Delaware corporation with its principal place of business in Dublin, California.

3. Upon information and belief, Defendant is a Delaware company with its principal place of business in Orangeburg, New York.

4. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1338(a) and 15 U.S.C. § 1121. This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

5. This Court has personal jurisdiction over Defendants because Defendants have established minimum contacts with the State of California by purposefully availing themselves of, and doing business in, the State of California through extensive sales in that state and advertising there in various media, including national television networks and the Internet.

6. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the false and misleading advertising and unfair competition complained of in this complaint has occurred and is occurring in this judicial district, and because TRIA and the public have suffered and continue to suffer injury in this judicial district as a result of the matters complained of herein.

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FACTUAL BACKGROUND

The TRIA System

7. Plaintiff designs, manufactures, markets, and sells the TRIA Laser Hair Removal System ("TRIA System"). The TRIA System consists of a semiconductor diode laser hand-held device that delivers infrared light, combined with a skin sensor that analyzes the user's skin-type to ensure safe use of the system.

8. The TRIA System uses a method known as selective photothermolysis, whereby the TRIA System's laser energy is selectively targeted at the dark pigment in hair in order to disable the hair follicle permanently and thereby prevent re-growth of the hair.

9. The Food and Drug Administration ("FDA") regulates the advertising and distribution of all "devices" that fall within the definition set forth in Section 201(h) of the Federal Food, Drug and Cosmetic Act ("FDC Act"), including any "instrument, apparatus, implement, machine, contrivance" which is "intended to affect the structure or any function of the body of man." 21 U.S.C. § 321(h). With certain exceptions not relevant here, a medical device may not be introduced into interstate commerce without approval by the FDA of a premarket application or clearance by FDA of a premarket notification under Section 510(k) of the FDC Act. In a Section 510(k) notification, a person proposing to distribute a device in interstate commerce must demonstrate that its device is "substantially equivalent" to a previously legally marketed device, referred to as a "predicate device." The device may not be legally marketed unless and until FDA issues an order declaring the device that is the subject of the Section 510(k) notification to be substantially equivalent to the predicate identified in the submission. To establish substantial equivalence, the Section 510(k) notification must, among other things, demonstrate to FDA's satisfaction that any technological differences between the new device and the predicate device do not render the new device less safe or effective than the predicate device. The evidence to make such a showing may include, as FDA deems necessary, human clinical testing or other appropriate scientific data. 21 U.S.C. § 360c(i)(1).

10. In 2005, the FDA granted Section 510(k) clearance for an earlier model of the TRIA System as a prescription device for hair removal, for use under the supervision of a practitioner

11. Defendant Radiancy markets and sells an OTC hair-removal device, in several models, under the brand or product name “no!no!” (the “no!no! Device”).

13. Radiancy distributes the no!no! Device nationally through its own Internet websites at <https://www.my-no-no.com> and <https://www.trynono.com> and its toll-free telephone number at 1-800-948-8215. These websites and the toll-free telephone number permit consumers located in any state, including California, to make direct purchases of the no!no! Device.

Radiancy's False And Misleading Advertising Claims

COMPLAINT FOR INJUNCTIVE RELIEF

1 advertising to the general public to promote sales of the product. This advertising consists of the
2 interstate distribution of information and materials to the general public, including to the public in
3 California.

4 16. In its labeling and advertising, Radiancy repeatedly claims that use of the no!no!
5 Device results not simply in a removal of hair (such as results from use of traditional hair-removal
6 techniques like shaving) but in an alteration of the physiological process by which a user normally
7 grows hair, resulting in a reduction of hair re-growth and hair density.

8 17. Radiancy claims that this reduction is substantial – indeed, Radiancy quantifies this
9 claim in large-type banners asserting that use of the no!no! Device results in “Up To 94% Reduction
10 In Hair Re-Growth,” <https://trynono.com/PS3/index.aspx?mid=807732>, or “Up to 94% less hair
11 regrowth,” <http://www.my-no-no.com>. In a frequently-broadcast television infomercial
12 (“Infomercial”), Radiancy makes the same that “with repeated use, hair density can be reduced by up
13 to 94%.”

14 18. Radiancy further claims throughout its Internet advertising, explicitly or implicitly,
15 that this near-100% reduction in hair re-growth is long-term or permanent. For example, on one of
16 Radiancy’s web sites, Radiancy promises that the user of the no!no! Device will obtain “long-term,
17 professional quality hair removal results,” <https://trynono.com/PS3/advantage.aspx>, and “guaranteed
18 long-term results, (<https://trynono.com/PS3/index.aspx?mid=807732>). On Radiancy’s other website,
19 Radiancy promises that the user will “get rid of unwanted hair and keep it gone.” [http://www.my-no-](http://www.my-no-no.com)
20 [no.com](http://www.my-no-no.com). And “sponsored links” purchased by Radiancy from various popular Internet search
21 engines has featured the following “banner” advertising claiming “permanent” results from use of
22 the no!no! Device:

23
24 **Permanent Hair Remover**

25 trynono.com/No_No_Special_Offer
26 Only \$270, 60 Days Trial!

Sponsored links

27 **NO NO The Amazing Home Hair Remover TV Offer-**

1 Likewise, in television commercials, infomercials, and sponsored segments on Home Shopping
 2 Network and QVC, Radiancy spokespersons repeatedly and forcefully reinforce and elaborate these
 3 claims of permanent hair removal with statements such as the following:

- 4 • “It’s been almost two years that I have not had to think about hair
 5 removal because of the no!no!”
 6 <http://www.youtube.com/watch?v=2IB789zasE0&feature=related>.
- 7 • “We’re talking about hair removal, this is no longer a short-term
 8 solution. We’re talking about a long-term benefit to having no hair
 9 returning”
 10 [http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=chan](http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel)
 11 [nel](http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel).
- 12 • “After just a few months of using it, less hair was there, and then I
 13 was done, for good – it was gone”
 14 [http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=chan](http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel)
 15 [nel](http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel).
- 16 • “You will have a life of freedom from hair” *Id.*
- 17 • “Certainly commit to it, because it’s going after all those little
 18 hairs. But I’ll tell you, once you get them, and once they’re gone,
 19 and they don’t come back, they’re gone for good.” *Id.*

20 19. Radiancy’s labeling and advertising purports to offer a scientific explanation for this
 21 claimed near-100%, permanent reduction in hair re-growth. According to Radiancy’s advertising,
 22 the no!no! Device incorporates a “proprietary technology,” which Radiancy has branded
 23 “Thermicon,” which Radiancy claims uses “thermolysis” or “the thermal principle of heat
 24 transference” to alter the body’s hair growing function. [https://www.my-no-no.com/technology-](https://www.my-no-no.com/technology-thermicon.asp)
 25 [thermicon.asp](https://www.my-no-no.com/technology-thermicon.asp). Specifically, Radiancy claims a “Thermicon effect” whereby the “no!no! conducts
 26 heat down the hair shaft and into the follicle. Like laser and IPL [intense pulsed light] treatments,
 27 the heat gradually disrupts the hair growth cycle.” <https://www.my-no-no.com/nono-about.asp>.
 28 Radiancy asserts that “the signal disrupts the cell communication between the bulge and root,”

1 which communication is “responsible for stimulating hair growth.” [https://www.my-no-](https://www.my-no-no.com/technology-thermicon.asp)
 2 [no.com/technology-thermicon.asp](https://www.my-no-no.com/technology-thermicon.asp).

3 20. Although the no!no! Device does not use or incorporate lasers, Radiancy falsely
 4 advertises the no!no! Device as being “like laser” for hair removal and the “Thermicon” technology
 5 as “laser-like.” For example, in one television commercial, Radiancy’s founder is shown stating that
 6 “Radiancy is the world leader in professional systems used by physicians, in physicians’ offices and
 7 medical spas. After years of research and millions of dollars spent, we managed to miniaturize the
 8 technology and come out with a solution that can be used at home,” thus suggesting that the no!no!
 9 Device is simply a “miniaturized” version of the laser-based hair removal systems used by
 10 dermatological professionals.

11 21. All of Radiancy’s claims regarding the effectiveness of the no!no! Device in
 12 achieving near-100%, permanent reduction of hair re-growth are reinforced by claims stating or
 13 implying that the effectiveness of the Radiancy Device has been clinically tested and proven, such as
 14 the following:

- 15 • “Clinical studies show it inhibits hair regrowth and can reduces
 16 [sic] hair density by up to 94% with no pain, no mess and no
 17 chemicals.” <https://www.my-no-no.com/nono-about.asp>.
- 18 • “What impresses me about **no!no!** is all the research and clinical
 19 studies that have been done to prove that it really does work. A
 20 more recent study shows that **no!no! reduces hair up to 94%**
 21 when used long term.”
 22 <https://trynono.com/PS3/index.aspx?mid=807732>.
- 23 • “Clinical data has shown that with repeated use, hair density can be
 24 reduced by up to 94% and the hair that does grow back comes back
 25 thinner and finer.” Infomercial.
- 26 • “The great thing about the no!no! is that it has been shown
 27 scientifically to actually have an effect similar to what lasers
 28

1 accomplish in the dermatologist office.”

2 <http://www.youtube.com/watch?v=BFZ8md9c2u8>.

3 22. Radiancy’s website lists three papers under the heading “Clinical Studies.” From a
4 review of these papers, it is apparent that none of these studies demonstrates (i) that use of the
5 Device results in a reduction of “hair re-growth”; (ii) that this reduction is substantial and can be as
6 much as 94%; (iii) that the reduction is “long-term” or “permanent”; (iv) that the reduction occurs as
7 a result of heat transference, or the “Thermicon effect,” whereby “no!no! conducts heat down the
8 hair shaft and into the follicle” and “the heat gradually disrupts the hair growth cycle”; or (v) that the
9 no!no! Device has “an effect similar to what lasers accomplish in the dermatologist office.” Nor
10 does Radiancy cite any other scientific basis for its claims. Tellingly, Radiancy, to TRIA’s
11 knowledge, has not submitted any of these studies to FDA or otherwise attempted to obtain
12 clearance from FDA for the no!no! Device as device for reducing hair regrowth, let alone effecting a
13 permanent reduction, and on information and belief, there is no such FDA clearance for the no!no!
14 Device.

15 23. Moreover, TRIA believes, based on scientific principles and the opinion of leading
16 independent experts, that Radiancy’s unsupported effectiveness claims are false and misleading. In
17 particular, TRIA submits that (i) use of the no!no! Device does not result in any “long-term” or
18 “permanent” reduction of hair or a reduction in the rate of hair re-growth, let alone a reduction of as
19 much as 94%; and (ii) the “Thermicon effect,” as depicted by Radiancy, does not occur and, in fact,
20 is a physical impossibility.

21 24. In a solitary and relatively obscure portion of one of its websites, Radiancy itself
22 effectively contradicts its widely advertised claim that use of the no!no! Device produces a
23 substantial, permanent reduction in hair re-growth. On the website
24 <https://trynono.com/PS3/faq.aspx>, Radiancy includes a link to a lengthy list of 44 “Frequently Asked
25 Questions” or “FAQ.” Buried in the middle of these is the question “How long do results last?” and
26 the following answer: “After 3-5 months of no treatments, hair might *return to pretreatment values*.
27 You can easily maintain results with continued use of no!no!” (Emphasis added).
28

25. No such disclosure is included in any of the television commercials or, as noted above, on the other of Radiancy's two websites. See <https://www.my-no-no.com>. Indeed, this single, obscure disclosure does not begin to counteract the ubiquitous and directly contrary claims that the user of the no!no! Device will have "no hair in the future," <https://trynono.com/PS3/advantage.aspx>; that the user will be able to "get rid of unwanted hair and keep it gone," <http://www.my-no-no.com>; that the user will be "guaranteed long-term results," <https://trynono.com/PS3/index.aspx?mid=807732>; that "It's been almost two years that I have not had to think about hair removal because of the no!no!," <http://www.youtube.com/watch?v=2IB789zasE0&feature=related>; that "After just a few months of using it, less hair was there, and then I was done, for good – it was gone" <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel>, that "it's going after all those little hairs. But I'll tell you, once you get them, and once they're gone, and they don't come back, they're gone for good," <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel>; and that "you will have a life of freedom from hair," <http://www.youtube.com/watch?v=3U0UYv8qwLc&feature=channel>.

26. Radiancy's labeling and advertising also incorporate a number of claims stating or implying that the no!no! Device is categorically equivalent or superior to laser-based hair removal systems in effectiveness, including the following:

- "The great thing about the No!no! is that it has been shown scientifically to actually have an effect similar to what lasers accomplish in the dermatologist office."
<http://www.youtube.com/watch?v=BFZ8md9c2u8>.
- "THE no!no! ADVANTAGE
Now you finally have a solution that lets you achieve long-term, professional quality hair removal results – in the comfort of your own home! You no longer need to hassle with the inconvenience and high cost of expensive, time consuming, and often painful professional treatments.

1 You can use the no!no! whenever and wherever you want – and
 2 see better results than you would get with professional solutions.
 3 We guarantee it!”

4 <https://trynono.com/PS3/index.aspx?mid=807732>; *accord*

5 <https://trynono.com/PS3/advantage.aspx>.

- 6 • “no!no! uses science, not magic, to get these great results. Based
 7 on Thermicon™ technology, no!no! conducts heat down the hair
 8 shaft and into the follicle. Like laser and IPL treatments, the heat
 9 gradually disrupts the hair growth cycle. But unlike lasers and
 10 IPLs, no!no! does not use light at all. This makes it universally
 11 safe and effective for EVERYONE - no matter the skin type or hair
 12 color, including blonde and grey hair!” [https://www.my-no-](https://www.my-no-no.com/nono-about.asp)
 13 [no.com/nono-about.asp](https://www.my-no-no.com/nono-about.asp).

14 27. Radiancy’s advertising also features a chart that explicitly compare the benefits from
 15 using the no!no! Device with those of, among other things, “laser treatment” without specifying any
 16 particular laser-based hair removal system. <https://trynono.com/PS3/advantage.aspx>.

17 28. In an attempt to reinforce its claims of equivalence and superiority to laser-based
 18 systems, and the TRIA systems in particular, and in a deliberate attempt to maximize the unlawful
 19 diversion of customers from TRIA, Radiancy has purchased, and uses, the terms “TRIA,” “TRIA
 20 Beauty,” “TRIA laser” and other phrases incorporating the TRIA name as “keywords” on leading
 21 Internet search engines, including Google, Yahoo!, and Bing, to generate sponsored links to
 22 Radiancy’s websites when Internet users conduct a search using one of these terms. In some of these
 23 sponsored links, Radiancy explicitly refers to TRIA in a manner that states or implies the
 24 equivalence or superiority of the no!no! Device to TRIA laser hair-removal products.

25 29. In addition, Radiancy has purchased sponsored links on Internet search engines that
 26 contain banner ads promoting the no!no! Device as providing “Laser Like Results.” *See, e.g.,*
 27 <http://www.google.com/#hl=en&expIds=17259,26637,27087,27113,27218,27357,27360,27404&sug>
 28

1 exp=ldymls&xhr=t&q=tria+laser&cp=7&pf=p&sclient=psy&aq=f&aqi=g-l4g-
 2 o1&aql=&oq=tria+l%3B&gs_rfai=&pbx=1&fp=b2da8a77dcd93603.

3 30. Where no specific laser-based hair removal systems are referenced in Radiancy's
 4 comparative advertisements, Radiancy's claims of equivalence and superiority to such products are
 5 true and not misleading only if the no!no! Device is, in fact, superior or equivalent to all such
 6 products, including not only TRIA's OTC laser-based hair removal systems, but also third-party
 7 prescription devices used by medical professionals such as the Candela GentleLASE® and
 8 Lumenis® LightSheer laser systems.

9 31. The no!no! Device is not superior or equivalent to TRIA's laser-based hair removal
 10 systems, nor is it superior or equivalent to third-party prescription devices used by medical
 11 professionals such as the Candela GentleLASE® and Lumenis® LightSheer laser systems.

12 32. Radiancy's advertising includes other bogus claims.

13 33. For example, Radiancy claims repeatedly that the no!no! Device is a "professional
 14 treatment," <http://www.youtube.com/watch?v=BFZ8md9c2u8>; that it is the "only at-home
 15 professional system for long-term hair removal," Infomercial; and that "no!no! is a breakthrough in
 16 hair removal because it delivers the same professional results using professional technology right in
 17 the privacy of your home." Infomercial. On information and belief, the no!no! Device is not used
 18 by dermatologic professionals, with the possible exception of professionals paid by Radiancy to act
 19 as endorsers, nor does the no!no! Device deliver the same results as any professional systems for the
 20 reduction of hair regrowth.

21 34. Radiancy also markets the no!no! Device with a cream product called "no!no!
 22 Smooth," which it labels and advertises as a "hair growth inhibitor cream" (the "no!no! Cream").
 23 Radiancy claims on the product label that the no!no! Cream contains an ingredient called
 24 "Capislow," which "helps reduce hair regrowth and density." In its advertising, Radiancy goes
 25 further, claiming, for example, that Capislow is "clinically proven to further reduce hair re-growth"
 26 (Infomercial) and can "reduce hair by 35%," "reduce hair density by 26%," and "reduce hair
 27 regrowth by 11%." <http://www.my-no-no.com/nono-smooth-about.asp>. On information and belief,
 28 these claims are false and misleading: Capislow is not clinically proven to reduce hair re-growth or

1 hair density, much less to the specific degrees claimed by Radiancy. Radiancy also describes
 2 Capislow as “patented,” although a search of the United States Patent and Trademark Office
 3 (“USPTO”) patent database reveals no patent for this product. Likewise, Radiancy affixes the
 4 statutory trademark registration symbol “®” to the name Capislow, although the USPTO trademark
 5 database reveals no trademark registration for this name.

6 35. In addition to its many false and misleading claims of effectiveness, both absolute and
 7 comparative, Radiancy also repeatedly claims throughout its Internet and television advertising that
 8 the no!no! Device is “universally safe and effective for everyone” [https://www.my-no-no.com/nono-](https://www.my-no-no.com/nono-about.asp)
 9 [about.asp](https://www.my-no-no.com/nono-about.asp); *accord, e.g., https://www.my-no-no.com/products.asp*; and will entail “no pain”
 10 <https://www.my-no-no.com/nono-about.asp>; *accord, e.g., https://www.my-no-no.com/products.asp*
 11 (devices are “pain-free”); <https://trynono.com/PS3/index.aspx?mid=807732> (video segment)
 12 (“totally pain-free”); and that “no matter where you no!no!, you can no!no! in comfort.”
 13 https://www.my-no-no.com/nono8800_about.asp; *accord, e.g.,*
 14 <https://trynono.com/PS3/advantage.aspx> (“You can use the no!no! whenever and wherever you
 15 want.”).

16 36. An appreciable percentage of consumers would assume from these claims that the
 17 no!no! Device has been determined by FDA to be safe for use anywhere on the body. On
 18 information and belief, FDA has made no such determination; thus, Radiancy’s advertising is
 19 misleading in this regard.

20 37. Moreover, on information and belief, Radiancy’s claims that the no!no! Device is safe
 21 and pain-free and may be used anywhere on the body are false and misleading without regard to the
 22 issue of FDA clearance. In a single location on one of its websites, Radiancy provides the following
 23 warning concerning one of the models of the no!no! Device, namely, the so-called “Classic”:
 24 “WARNING! Never use no!no! on the face, breasts or genitals.” [https://www.my-no-no.com/nono-](https://www.my-no-no.com/nono-how-to-use.asp)
 25 [how-to-use.asp](https://www.my-no-no.com/nono-how-to-use.asp). And the user’s manual admits that “Those with sensitive skin may experience a
 26 burning sensation or find that their skin becomes uncomfortably hot during treatment.” no!no!
 27 User’s Manual at p. 6. With regard to another model, the “8800,” Radiancy similarly cautions, “Do
 28 not use no!no! on the breasts or genitals.” https://www.my-no-no.com/nono8800_about.asp. These

statements evidence the falsity of Radiancy's claims that the no!no! devices are "universally safe," "totally pain-free," and may be used "whenever and wherever you want."

FIRST CLAIM FOR RELIEF

FEDERAL UNFAIR COMPETITION

[Lanham Act § 43(a), 15 U.S.C. § 1125(a)]

38. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

39. The above-described advertising claims made by Defendant either deceived or had the capacity to deceive a substantial segment of potential consumers for aesthetic hair removal products.

40. Defendant's deception was and is material, in that it was and is likely to influence a consumer's purchasing decisions.

41. Defendant has caused their false statements to enter interstate commerce.

42. Defendant's advertising claims, as alleged above, violate 15 U.S.C. Section 1125(a) and have caused and/or are likely to cause damage to TRIA and the public in an amount to be determined at trial, and, unless restrained, will further damage TRIA and the public.

43. In making and disseminating the above-described materially false and misleading advertising claims, Defendant knew, or by exercise of reasonable care should have known, that the claims were untrue and/or misleading and likely to deceive the public. Accordingly, the actions of Defendant were willful, and this is an exceptional case justifying an award of reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

CALIFORNIA FALSE ADVERTISING

[Cal. Bus. & Prof. Code § 17500]

44. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

45. Defendant's advertising, as alleged above, contains statements that are untrue or misleading. Defendant knows or should have known by exercise of reasonable care that the statements were untrue or misleading.

1 46. Defendant's advertising violates Section 17500 of the California Business and
 2 Professions Code. Plaintiff TRIA has suffered injury in fact and has lost money or property as a
 3 result of such unfair competition, causing damage to TRIA in an amount to be determined at trial,
 4 and, unless restrained, will further damage TRIA.

5 **THIRD CLAIM FOR RELIEF**

6 **CALIFORNIA UNFAIR COMPETITION**

7 [Cal. Bus. & Prof. Code § 17200 *et seq.*]

8 47. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

9 48. Defendant's advertising, as alleged above, constitutes unlawful, unfair and/or
 10 fraudulent conduct in violation of Section 17200 of the California Business and Professions Code.
 11 TRIA has suffered injury in fact and has lost money or property as a result of such unfair
 12 competition, causing damage to TRIA in an amount to be determined at trial, and, unless restrained,
 13 will further damage TRIA.

14 **FOURTH CLAIM FOR RELIEF**

15 **INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARKS**

16 [Lanham Act § 32, 15 U.S.C. § 1114]

17 49. Plaintiff incorporates and realleges each of the averments of the previous paragraphs.

18 50. The terms TRIA and TRIA BEAUTY are valuable trademarks of Tria in active use in
 19 commerce and registered in the United States, among other jurisdictions, in connection with, among
 20 other things, electrical devices for personal use for removing hair, eliminating acne, facial
 21 rejuvenation and toning, and skin care; and acne treatment and skin care preparations (United States
 22 Trademark Registration Nos. 3360633, 3756135, 3807647, 3822558, and 3828866).

23 51. Radiancy has used these registered TRIA trademarks in commerce in connection with
 24 the sale, offering for sale, distribution, or advertising of goods in connection with which such use is
 25 likely to cause confusion, to cause mistake, or to deceive and thereby constitute infringement of
 26 these registered trademarks in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.
 27 Radiancy's infringement of TRIA's registered trademarks has caused and/or is likely to cause
 28

1 damage to TRIA and the public in an amount to be determined at trial, and, unless restrained, will
 2 further damage TRIA and the public.

3 PRAYER FOR RELIEF

4 WHEREFORE, the Plaintiff seeks judgment as follows:

5 On the First Claim for Relief

6 1. For preliminary and permanent injunctions:

7 a. Enjoining and restraining Defendant and its agents, servants and employees
 8 from publishing or publicly disseminating any statement, either directly or indirectly, concerning the
 9 nature, characteristics and qualities of the no!no! Device and/or the no!no! Cream in any way so as
 10 to constitute unfair competition or deceptive, untrue, or misleading advertising;

11 b. Ordering Defendant to issue statements retracting its false and/or misleading
 12 and deceptive statements concerning the no!no! Device and the no!no! Cream by distributing such
 13 retractions, in a form approved by TRIA, to all recipients of Defendant's advertising containing said
 14 false and/or misleading and deceptive statements and by posting such retractions on its websites at
 15 <https://www.my-no-no.com> and <https://www.trynono.com> for at least six (6) months;

16 c. Ordering that all of Defendant's physical brochures, advertisements, press
 17 releases and promotional materials that contain unlawful statements concerning the no!no! Device
 18 and/or the no!no! Cream be recalled and destroyed;

19 2. That Defendant file with this Court and serve upon TRIA within fifteen (15) days
 20 after issuance of any injunction, a report in writing, under oath, setting forth in detail the manner and
 21 form in which Defendant has complied with the injunction.

22 3. That the Court award TRIA:

23 a. All damages sustained by reason of the wrongful acts complained of herein in
 24 an amount to be proven at trial;

25 b. Treble the amount of the actual damages suffered by TRIA pursuant to 15
 26 U.S.C. § 1117;

27 c. Costs of this action;

1 d. Reasonable attorneys' fees, in that this is an exceptional case, within the
2 meaning of 15 U.S.C. § 1117(a); and

3 e. Such other and further relief as the Court shall deem just.

4 On the Second and Third Claims for Relief

5 4. For preliminary and permanent injunctions:

6 a. Enjoining and restraining Defendant and its agents, servants and employees
7 from publishing or publicly disseminating any statement, either directly or indirectly, concerning the
8 nature, characteristics and qualities of the no!no! Device and/or the no!no! Cream in any way so as
9 to constitute unfair competition or deceptive, untrue, or misleading advertising;

10 b. Ordering Defendant to issue statements retracting its false and/or misleading
11 and deceptive statements concerning the no!no! Device and/or the no!no! Cream by distributing such
12 retractions, in a form approved by TRIA, to all recipients of Defendant's advertising containing said
13 false and/or misleading and deceptive statements and by posting such retractions on its websites at
14 <https://www.my-no-no.com> and <https://www.trynono.com> for at least six (6) months;

15 c. Pursuant to California Business and Professions Code § 17203, ordering that
16 Defendant immediately cease and desist from making reference, either directly or indirectly, to the
17 no!no! Device and/or the no!no! Cream in any way so as to constitute unfair competition or
18 deceptive, untrue, or misleading advertising;

19 5. That Defendant file with this Court and serve upon TRIA within fifteen (15) days
20 after issuance of any injunction, a report in writing, under oath, setting forth in detail the manner and
21 form in which Defendant has complied with the injunction.

22 6. That the Court award TRIA:

23 a. Costs of this action;

24 b. Such other and further relief as the Court shall deem just.

25 On the Fourth Claim for Relief

26 7. Preliminarily and permanently enjoining and restraining Defendant and its agents,
27 servants and employees from using any registered or unregistered TRIA trademark in commerce in
28 connection with the sale, offering for sale, distribution, or advertising of goods in connection with

1 which such use is likely to cause confusion, to cause mistake, or to deceive, including without
2 limitation use as an Internet search keyword, metatag, or domain name;

3 8. That Defendant file with this Court and serve upon TRIA within fifteen (15) days
4 after issuance of any injunction, a report in writing, under oath, setting forth in detail the manner and
5 form in which Defendant has complied with the injunction.

6 9. That the Court award TRIA:

7 a. All damages sustained by reason of the wrongful acts complained of herein in
8 an amount to be proven at trial;

9 b. Treble the amount of the actual damages suffered by TRIA pursuant to 15
10 U.S.C. § 1117;

11 c. Costs of this action;

12 d. Reasonable attorneys' fees, in that this is an exceptional case, within the
13 meaning of 15 U.S.C. § 1117(a); and

14 e. Such other and further relief as the Court shall deem just.

15 **JURY DEMAND**

16 Plaintiff TRIA demands a jury trial for all claims as provided for in Federal Rule of Civil
17 Procedure 38.

18
19 DATED: November 5, 2010

20 Respectfully submitted,

21
22 By: 

23 Thad A. Davis
24 Joshua V. Van Hoven
25 ROPES & GRAY LLP

26 Attorneys for Plaintiff
27 TRIA BEAUTY, INC.
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